

EXHIBIT 2

REDACTED VERSION

OF DOCUMENT

SOUGHT TO BE SEALED

Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION
Case No. 3:17-cv-00939-WHA

WAYMO LLC,

Plaintiff,

vs.

UBER TECHNOLOGIES, INC.; OTTOMOTTO
LLC; OTTO TRUCKING LLC,

Defendants.

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF CRAIG CLARK
FRIDAY, DECEMBER 22, 2017

Reported by:

Kelli Ann Willis, RPR, CRR

JOB No. 2780742

PAGES 1 - 387

	Page 46
1 person's name, I would know her. Julie, I want to	10:00:15
2 say. I know -- yeah, beyond that, I would be	10:00:20
3 guessing.	10:00:31
4 Q. Did you have any interaction with the ATG	10:00:32
5 group while you were at Uber?	10:00:34
6 MR. STUMPHAUZER: Object to form.	10:00:38
7 THE WITNESS: So, interaction, I've seen	10:00:39
8 presentations. I've -- I've worked with -- I	10:00:43
9 worked with people in ATG on -- what have I	10:00:48
10 worked with ATG on? There was -- there was	10:00:56
11 some penetration testing that was done	10:01:00
12 vis-a-vis the -- kind of their -- like,	10:01:02
13 facilities.	10:01:05
14 There was an encampment of homeless people	10:01:07
15 near Harrison Street that was camped out in	10:01:13
16 their -- in the area, and I was -- and they	10:01:15
17 solicited some advice from me.	10:01:19
18 BY MS. TARAZI:	10:01:22
19 Q. You said that you have seen presentations	10:01:22
20 made by ATG; is that correct? Did I recall that	10:01:32
21 correctly?	10:01:35
22 A. Yes.	10:01:35
23 Q. Have you ever given presentations to the	10:01:36
24 ATG group?	10:01:37
25 A. No.	10:01:38

	Page 132
1 at the meeting, or small kind of admin something. I	12:08:57
2 don't require -- I don't recall -- I don't recall	12:09:01
3 using that, like, being a power user.	12:09:06
4 Q. What were the default retention settings	12:09:10
5 at UChat?	12:09:14
6 A. I don't know. I think at one point it	12:09:15
7 was -- I think it varied. I think UChat was --	12:09:16
8 you'd have to talk to the Uber company person.	12:09:22
9 Q. Did you use HipChat?	12:09:27
10 A. I did.	12:09:28
11 Q. What did you use HipChat for?	12:09:29
12 A. The same way I used UChat: infrequently.	12:09:31
13 It's a terrible product. Horribly insecure.	12:09:34
14 Q. "Horribly insecure," what does that mean?	12:09:38
15 A. It means that the communication platform	12:09:41
16 itself is not secure. It's been hacked multiple	12:09:43
17 times.	12:09:46
18 Q. Is UChat secure?	12:09:48
19 A. I don't know. I'm not a security -- I'm	12:09:51
20 not a security expert, but I'm not aware of	12:09:54
21 compromises of UChat.	12:09:57
22 Q. Have you used Wickr?	12:09:59
23 A. Yes.	12:10:00
24 Q. And what did you use Wickr for?	12:10:01
25 A. I used Wickr for everything from	12:10:03

	Page 139
1 Q. How many such discussions?	12:16:26
2 A. I don't know. Twenty.	12:16:28
3 Q. And what instructions did you give	12:16:29
4 employees regarding when to use a particular	12:16:31
5 communications platform as opposed to another	12:16:34
6 communications platform?	12:16:36
7 A. If you are -- if you are on legal hold,	12:16:37
8 you can't use ephemeral communications.	12:16:40
9 Q. Is that the only instruction that you ever	12:16:44
10 provided to Uber employees regarding the use of	12:16:46
11 ephemeral communications?	12:16:52
12 A. I don't know. To the best of the	12:16:59
13 recollection, that's the one that sticks out I would	12:17:04
14 tell people.	12:17:06
15 Q. Did you ever instruct employees to use	12:17:09
16 ephemeral communications platforms in order to avoid	12:17:12
17 the retention of such communications?	12:17:16
18 A. Absolutely not.	12:17:18
19 Q. I think I asked you about the retention --	12:17:38
20 the default retention of UChat, and I think you said	12:17:44
21 you don't know what the default retention period	12:17:47
22 was; is that correct?	12:17:50
23 A. I don't know for sure. It has changed,	12:17:52
24 but I think at one point it was maybe seven days.	12:17:54
25 But I'm not -- but I'm not certain.	12:17:59

	Page 145
1 be done through technical investigation, but then,	12:24:19
2 ultimately, you need to sit down with the person and	12:24:21
3 talk. Oftentimes, it's, like, No, I did have a	12:24:23
4 legitimate reason for looking at this.	12:24:26
5 So, that's why I would use Oscar.	12:24:28
6 Q. Did you use Oscar for any other	12:24:33
7 investigations?	12:24:35
8 A. Not that I recall.	12:24:36
9 Q. Did you use Oscar for any investigations	12:24:36
10 into Google or Waymo?	12:24:39
11 A. No.	12:24:41
12 Q. Did you communicate with Oscar using	12:24:45
13 Wickr?	12:24:48
14 A. I did.	12:24:49
15 Q. Why did you communicate with Oscar using	12:24:50
16 Wickr?	12:24:51
17 A. It's a great secure communication	12:24:51
18 platform.	12:24:54
19 Q. What does "secure" mean?	12:25:06
20 A. Secure means end-to-end encrypted, and	12:25:08
21 it's ephemeral. The best -- the best -- the most	12:25:12
22 secure way to store something is to not have it.	12:25:18
23 Q. Did you use Oscar and TAL Global -- did	12:25:23
24 you communicate with Oscar and TAL Global via Wickr	12:25:27
25 to avoid your discussions being discovered by	12:25:35

Page 146

1 government investigators or parties to this 12:25:38
2 litigation? 12:25:40
3 A. No. 12:25:40
4 Q. You were starting to say something there? 12:25:42
5 A. No, because I saw where you were going. 12:25:43
6 It's just -- let's continue. 12:25:45
7 Q. Do you find the question offensive? 12:25:57
8 A. I do. 12:25:59
9 Q. Why is that? 12:25:59
10 A. Because it's accusing me of -- I find it 12:26:00
11 accusatory. 12:26:03
12 Q. I'm handing you a document that we will 12:26:09
13 mark as Exhibit 9704. 12:26:12
14 (The referred-to document was marked by 12:26:24
15 the court reporter for Identification as 12:26:24
16 Deposition Exhibit 9704.) 12:26:24
17 BY MS. TARAZI: 12:26:24
18 Q. When you find it accusatory, what do you 12:26:26
19 mean by that? 12:26:28
20 A. The question felt accusatory. 12:26:30
21 Q. Who is [REDACTED]? 12:26:47
22 A. Can I have a minute with the document? 12:26:50
23 Q. Sure. 12:26:52
24 A. [REDACTED], I don't know if he's a 12:27:37
25 principal or employee of [REDACTED]. 12:27:41

Page 199

1 A. I have. 02:29:19

2 Q. When did you instruct employees at Uber to 02:29:19

3 designate documents attorney-client privileged? 02:29:23

4 A. When they were seeking legal advice. 02:29:26

5 Q. Is that -- 02:29:31

6 A. And even if the specter of legal advice is 02:29:32

7 there, all right? So -- so, if I'm communicating -- 02:29:36

8 so this label thing is very interesting to me. 02:29:40

9 In that time, the way I see it, a label is 02:29:44

10 a tag, right? So, ultimately, privileged 02:29:46

11 determinations are made by judges. And they are 02:29:49

12 made by judges based on advocacy by the parties' 02:29:51

13 clients who are making decisions when they are 02:29:55

14 producing documents about what they think is 02:29:57

15 privileged or not privileged. 02:29:59

16 Whether something has a tag on it really 02:30:01

17 facilitates review: Hey, heads up, document 02:30:04

18 reviewers, this might be privileged. 02:30:08

19 So, I see where you're going with this 02:30:10

20 line. Counselor, and maybe I can short-circuit it. 02:30:15

21 with that. Let's move on to your next question. 02:30:17

22 Q. Did you provide an instruction to anyone 02:30:24

23 at Uber to mark documents as attorney-client 02:30:27

34 privileged when you believed the documents were not 02:30:30

25 privileged? 02:30:35

	Page 202	
1	all I'm asking.	02:32:51
2	MS. GOODMAN: Was it Uber's policy to tell	02:32:52
3	people to mark documents "attorney-client	02:32:55
4	privileged" if they were not privileged?	02:32:57
5	You can answer that question.	02:33:01
6	THE WITNESS: No.	02:33:06
7	BY MS. TARAZI:	02:33:07
8	Q. Did you ever tell people to mark documents	02:33:07
9	as "attorney-client privileged" when they were not	02:33:09
10	privileged?	02:33:12
11	MR. STUMPHAUZER: The same issue.	02:33:13
12	MS. GOODMAN: You can answer that	02:33:15
13	question.	02:33:15
14	THE WITNESS: I'm sorry, you said I can	02:33:16
15	answer that question?	02:33:18
16	MS. GOODMAN: Did you ever tell people, as	02:33:19
17	a matter of policy, to mark documents as	02:33:21
18	"attorney-client privileged" when they were not	02:33:23
19	privileged?	02:33:25
20	THE WITNESS: You're saying I can answer	02:33:25
21	that question?	02:33:32
22	No.	02:33:33
23	MS. GOODMAN: If you want to find out what	02:33:40
24	he did, in fact, tell people, show him law dog	02:33:41
25	presentation that he's referenced multiple	02:33:46

	Page 203
1 times now.	02:33:49
2 MS. TARAZI: We'll come to that.	02:33:49
3 BY MS. TARAZI:	02:34:00
4 Q. Well, the law dog presentation, was that	02:34:01
5 the only presentation provided by Uber lawyers	02:34:02
6 regarding the topic of when to designate documents	02:34:08
7 "attorney-client privileged"?	02:34:12
8 MS. GOODMAN: Object to form.	02:34:13
9 THE WITNESS: I don't purport to have	02:34:16
10 knowledge of all of the presentations that	02:34:18
11 legal has given to everybody. I also don't	02:34:19
12 characterize what that presentation does.	02:34:23
13 BY MS. TARAZI:	02:34:33
14 Q. Did you attend a meeting in Pittsburgh,	02:34:33
15 Pennsylvania, relating to the use of the	02:34:35
16 attorney-client privilege or dropped designations?	02:34:37
17 A. I've never been to Pittsburgh.	02:34:42
18 Q. So that's a no?	02:34:44
19 MS. TARAZI: The court reporter is going	02:35:18
20 to hand you a document marked Exhibit 9709.	02:35:25
21 (The referred-to document was marked by	02:35:32
22 the court reporter for Identification as	02:35:32
23 Deposition Exhibit 9709.)	02:35:32
24 BY MS. TARAZI:	02:35:44
25 Q. Mr. Clark, is that the law dog	02:35:44

	Page 205
1	MS. GOODMAN: To be clear, meta data may 02:37:21
2	be associated with these documents. You may 02:37:22
3	just not have it at your fingertips. 02:37:25
4	MS. TARAZI: The question was, do you have 02:37:27
5	it, and I said I do not. 02:37:29
6	BY MS. TARAZI: 02:37:32
7	Q. Did you create a version of this document 02:37:32
8	that did not have the Uber logo on it? 02:37:34
9	A. No. 02:37:37
10	Q. Did you ever give a presentation using a 02:37:37
11	deck similar to this that did not have the Uber logo 02:37:43
12	on it? 02:37:47
13	A. No. This page -- this first page is 02:37:47
14	always the same with the exception of dates. Some 02:37:50
15	of them may have been dated different, but... so, I 02:37:53
16	wouldn't always catch the date. But every version 02:37:57
17	of this presentation had the same slide. This is 02:37:59
18	the Uber slide of a woman walking on a sidewalk in 02:38:05
19	San Francisco, and it is notable because we often 02:38:11
20	joke about where she's going and what she's doing. 02:38:15
21	Q. How many times did you give a presentation 02:38:32
22	using this document? 02:38:33
23	A. Using this specific deck? I don't know. 02:38:35
24	Q. How many times did you give a presentation 02:38:39
25	using a version of this deck? 02:38:40

Page 213

1 presentations, do you just recall discussing the 02:46:35
2 need for or the desire to provide this presentation 02:46:38
3 with anyone other than Mat Henley? 02:46:42

4 A. I'm sorry? 02:46:44

5 Q. Do you recall discussing this presentation 02:46:44
6 with anyone other than Mat Henley? 02:46:46

7 A. Yes. I discussed it with many people. 02:46:49

8 Q. What did you discuss about the 02:46:50
9 presentation? 02:46:52

10 A. Like use it. Other people in legal wanted 02:46:52
11 it. I was -- when I was putting it together, I was 02:46:55
12 asking around if anybody had created decks about 02:46:59
13 privilege, and people saying, Yeah, it's a great 02:47:02
14 idea, you should do it. 02:47:05

15 So, several people in litigation. I 02:47:06
16 talked to Sullivan about it, perhaps. Yeah, a lot 02:47:10
17 of people I talked to about the presentation. 02:47:17

18 Q. What did you talk to Sullivan about it? 02:47:19

19 A. I said I'm going to give a presentation. 02:47:21

20 Q. Did you tell him what the presentation was 02:47:28
21 about? 02:47:30

22 A. Yeah. I'm going give a legal overview. 02:47:31

23 Q. Did you tell him any more than that? 02:47:33

24 A. I don't recall. 02:47:35

25 Q. How much do you recall about what you told 02:47:39

Page 214

1 people as you showed each slide? 02:47:42
2 A. Oh, quite a bit, probably. 02:47:44
3 Q. Why did you use dogs? 02:47:46
4 A. I love dogs. Do you not like dogs, 02:47:48
5 Counsel? 02:47:50
6 Q. It's not my deposition. 02:47:52
7 A. Okay. 02:47:53
8 Q. What -- let's turn to the fourth page. 02:47:56
9 It's marked 340308. 02:48:06
10 A. 340308? 02:48:11
11 Q. Yes. 02:48:15
12 A. Yes, I see it. 02:48:15
13 Q. You put: "Law! Equals Science"? What is 02:48:16
14 that? 02:48:20
15 A. Actually, it says: Law, Bang, Equals 02:48:21
16 Equal Science." That's Javascript for: Law does 02:48:23
17 not equal science. 02:48:27
18 Q. I learned something. 02:48:28
19 A. I'm presenting this -- 02:48:28
20 Q. Exclamation point equal equal is the 02:48:33
21 "not," Javascript for -- 02:48:35
22 A. Java script, does not equal. Bang. The 02:48:37
23 programmers use bang for their exclamation point. 02:48:41
24 "Bang equal equal" means "does not equal" in 02:48:45
25 Javascript. 02:48:49

Page 215

1 You've got to understand, I'm dealing with 02:48:50
2 a lot of technical people, coders and things like 02:48:51
3 this. Another way I'm able to get rapport and work 02:48:55
4 with these people, have them come to me, is to try 02:48:58
5 to speak their language. They would typically laugh 02:49:00
6 at me when they see that. They'd go: Look at the 02:49:01
7 Javascript, the old guy trying to -- the old boy 02:49:02
8 trying to use Java script. 02:49:06

9 Q. And I clearly didn't understand it. I 02:49:06
10 definitely do not speak Javascript. 02:49:14

11 What did you mean by law "does not equal 02:49:15
12 science"? 02:49:16

13 A. So, again, I'm dealing with very technical 02:49:17
14 people who are -- they -- they probably think in 02:49:20
15 math and in equations, if you will. They like 02:49:25
16 answers that are absolute. And the law is anything 02:49:28
17 but absolute. The law is not math. The law is not 02:49:35
18 science. 02:49:40

19 Q. If you turn to the slide marked 340311? 02:49:43

20 A. 340311. Yes. 02:49:51

21 Q. It looks like a mock-up of an email with 02:49:57
22 an X over it. 02:50:01

23 A. Yes. Let me explain. So, most of these 02:50:02
24 slides, I wouldn't say most, but many of these 02:50:05
25 slides have had animation that's not reflected in 02:50:09

Page 216

1 the printout. 02:50:12

2 Q. Okay. 02:50:13

3 A. So, carry on. 02:50:13

4 Q. What was the slide attempting to reflect? 02:50:19

5 A. So, I've got to back up a little bit. 02:50:23

6 So, I've gone through -- at this point, 02:50:26

7 I've gone through the elements of privilege, and 02:50:28

8 then I'm giving them -- I'm showing them emails, and 02:50:31

9 saying: Is this -- what do you guys think? 02:50:34

10 Privileged, not privileged? 02:50:37

11 Q. Underneath the X, it's a little tricky to 02:50:44

12 read, but it looks like the text of the email that 02:50:49

13 you have included in the presentation says, 02:50:52

14 "Attached are the" -- do you recall what this says? 02:50:54

15 A. No. 02:51:00

16 Q. "Attached are the" -- something. It looks 02:51:00

17 like it might be say, "numbers for last quarter." 02:51:04

18 Does that sound like it could be right? 02:51:07

19 A. Could be. 02:51:11

20 Q. "We need to discuss ASAP. I am marking 02:51:11

21 this attorney-client privilege due to sensitivity." 02:51:15

22 Obviously, quite a number of those letters 02:51:17

23 are blacked out, but does that sound right to you? 02:51:21

24 A. It sounds right. 02:51:23

25 Q. Then there's an X over that. 02:51:24

Page 217		
1	Does that indicate that you informed the	02:51:27
2	attendees at the presentation that that email was	02:51:31
3	not privileged?	02:51:33
4	A. This is an example that I used to say --	02:51:34
5	again, you have got to back up to the presentation.	02:51:36
6	So, at this point, I've kind of also	02:51:39
7	walked people through -- there's a lot of people who	02:51:41
8	aren't -- aren't Americans, either. You've got	02:51:46
9	people from all over. We're a very diverse group of	02:51:48
10	people.	02:51:51
11	So, I've given them a slight overview, a	02:51:51
12	quick overview of what -- of the litigation system	02:51:54
13	and the idea of privilege.	02:51:59
14	At this point, I've made -- I've already	02:52:00
15	said at least once or twice that we don't make these	02:52:02
16	determinations; judges make these determinations.	02:52:05
17	So, I'm up there. I give them this	02:52:08
18	hypothetical. I have them read it, and people raise	02:52:11
19	their hand. Okay, so, based upon what you've	02:52:13
20	learned so far, who thinks it's privileged? I get	02:52:16
21	the responses. And then the red X comes out. I	02:52:19
22	would make the determination that this is not	02:52:23
23	privileged. It is not concerning legal advice and	02:52:25
24	other elements are missing from it.	02:52:40
25	Q. What other elements are missing from it?	02:52:42

Page 218

1 A. So, I'm not going to sit and analyze it, 02:52:45
2 but it doesn't look like it's -- the To and the 02:52:48
3 From, yeah. 02:52:52
4 Q. Well, I'm not asking you now, but I'm 02:52:54
5 interested in what you told the people who attended 02:52:57
6 the presentation as to why this would not be 02:53:00
7 privileged. 02:53:02
8 A. We should just get on the record that Uber 02:53:03
9 has waived privilege on this deck itself, correct? 02:53:05
10 MS. GOODMAN: You can discuss the contents 02:53:09
11 of this deck and the presentation you gave 02:53:11
12 surrounding the deck. 02:53:16
13 THE WITNESS: Okay. I'm sorry. Can you 02:53:17
14 ask your question again? 02:53:21
15 BY MS. TARAZI: 02:53:23
16 Q. Sure. My question was: What did you tell 02:53:30
17 the attendees at your presentation as to why this 02:53:32
18 email was not privileged? 02:53:39
19 A. So I -- look, I didn't necessarily do 02:53:42
20 that. I've already given them all the -- all the 02:53:44
21 elements. And so, look, I don't -- when I'm 02:53:48
22 presenting, I try to be pretty dynamic. I don't 02:53:51
23 stick to -- I want to use images because it's my 02:53:55
24 firm belief, and the best presenters that I've ever 02:53:58
25 seen don't put words on PowerPoints. The presenter 02:54:00

Page 219

1	presents the -- this should just be demonstrative.	02:54:03
2	So, at this point, I've given -- I've	02:54:07
3	gotten the poll. I've gotten everybody's idea. No	02:54:09
4	red Xs; let's go to the next one.	02:54:11
5	Q. So, if this is not the correct slide I	02:54:13
6	should be asking about, why don't you direct me to	02:54:17
7	the slide I should be asking about, so you can tell	02:54:19
8	me what it is that you told the attendees as to when	02:54:23
9	a document is protected by the attorney-client	02:54:25
10	privilege.	02:54:28
11	A. Okay. Back up one. And this is	02:54:29
12	difficult -- this is difficult because the animation	02:54:32
13	is not there.	02:54:34
14	Q. Okay.	02:54:35
15	A. And guys on the phone, I'm really sorry	02:54:37
16	about this because you're going to have no idea what	02:54:39
17	I'm talking about.	02:54:41
18	So, this is the picture -- I've got to	02:54:43
19	slow down talking to you. I'm so sorry. I'll slow	02:54:45
20	down.	02:54:48
21	Underneath there, you see two -- it looks	02:54:49
22	like tin cans, underneath the images.	02:54:51
23	Q. Yes, I see that. Yes.	02:54:55
24	A. Do you see that?	02:54:55
25	Q. Uh-huh.	02:54:56

	Page 220	
1	A. So, that's the first image that pops up on	02:54:56
2	the slide, and I'm walking through the elements, and	02:55:00
3	there's a string between those two cans.	02:55:02
4	I say: What does the attorney-client	02:55:04
5	privilege cover? It covers a communication. It	02:55:06
6	could be any kind of communication. It could be a	02:55:08
7	conversation. It could be an email. It can be a	02:55:11
8	memo. It could be a Wickr. It could be a -- a --	02:55:14
9	whatever it is, it just has to be a communication.	02:55:17
10	And then I say: Next element, it has to	02:55:21
11	be between a lawyer, our little law dog main guy	02:55:23
12	pops up here, and a client. And our little dog with	02:55:29
13	glasses over there pops up. All right? So then	02:55:34
14	I've got them following along.	02:55:37
15	You can't see this really at all, but you	02:55:39
16	see it looks like there's a top of a road sign that	02:55:40
17	pops up there, and I say: It has to be of and	02:55:43
18	concerning legal advice.	02:55:50
19	And the sign post is up there, and it has	02:55:51
20	help, support, advice, blah, blah, blah. I give	02:55:54
21	some examples about it. These other images you	02:55:59
22	cannot see here, but I think there's a dog that	02:56:02
23	looks very embarrassed like it did something wrong.	02:56:05
24	There's another one of a dog biting the finger	02:56:08
25	there. And then there's Kujo in the cage down at	02:56:12

Page 221

1 the bottom there. 02:56:15

2 So, I'm giving them examples of what is of 02:56:15

3 and concerning legal advice. Well, it could be 02:56:18

4 broad, it could be narrow, but it's usually 02:56:20

5 something where you're thinking, man, I've got to 02:56:22

6 talk to a lawyer. 02:56:24

7 There's somebody in the lobby who has 02:56:25

8 chained himself to a bench and they're protesting, 02:56:28

9 and you're calling me for -- what are we going to do 02:56:32

10 to remove them, right? How do we engage with law 02:56:36

11 enforcement? 02:56:40

12 There's somebody -- somebody has -- 02:56:40

13 there's been a horrific homicide in the city that we 02:56:43

14 are operating in, and the -- and we need to -- we 02:56:49

15 need to mobilize to get information to law 02:56:53

16 enforcement. 02:56:56

17 There's a contract that you've worked on 02:56:57

18 that you think has maybe been breached. 02:56:58

19 So, those are the examples that I go 02:57:02

20 through with this. 02:57:03

21 And then the last dog, our -- our bulldog 02:57:04

22 here pops out, and I said: It cannot be used to 02:57:08

23 commit a crime or fraud. 02:57:11

24 Q. That's the dog with the sunglasses? 02:57:14

25 A. Yeah, that's our gangster bulldog there. 02:57:18

	Page 222
1	Pretty nefarious, huh? 02:57:21
2	Q. Did you provide any other guidance other 02:57:24
3	than the guide you just described? 02:57:27
4	A. Yes. I continue through the deck. 02:57:31
5	Q. On this slide regarding generally the 02:57:32
6	contours of attorney-client privilege? 02:57:34
7	A. So, that's it in a nutshell. Now, because 02:57:38
8	I don't follow a book when I'm presenting these 02:57:42
9	things, certainly there's some variance. It would 02:57:44
10	be unlikely I used the exact same examples and 02:57:48
11	certainly not the same language each time. 02:57:51
12	MS. TARAZI: Let's go off the record. 02:57:54
13	THE VIDEOGRAPHER: Off the record. 02:57:57
14	2:55 p.m. This is the end of Media Unit No. 3. 02:57:57
15	(Thereupon, a recess was taken, after 02:58:18
16	which the following proceedings were held:) 02:58:18
17	THE VIDEOGRAPHER: We are back on the 03:03:11
18	record at 3:01 p.m. This is the beginning of 03:03:11
19	Media Unit No. 4. 03:03:14
20	BY MS. TARAZI: 03:03:16
21	Q. Mr. Clark, did you ever instruct the 03:03:16
22	employees to be over-inclusive in their privilege 03:03:19
23	designations? 03:03:22
24	MS. GOODMAN: You may answer that 03:03:26
25	question. 03:03:27

	Page 223	
1	THE WITNESS: No. This is, I hope,	03:03:28
2	demonstrating the exact opposite. It is	03:03:36
3	meaningless to do so. Ultimately, an arbitrary	03:03:43
4	of what is privileged or not privileged is a	03:03:44
5	judge. And the designation and the propriety	03:03:50
6	of those designations are done by outside	03:03:54
7	counsel, typically, who are doing productions.	03:03:56
8	BY MS. TARAZI:	03:03:58
9	Q. Let's turn to the slide that's Bates	03:04:04
10	stamped 340312.	03:04:06
11	A. 340312.	03:04:10
12	Q. Two pages on.	03:04:14
13	A. Yes.	03:04:15
14	Q. So, again, I don't really want to try to	03:04:15
15	read through the X here, but I believe what it --	03:04:20
16	but I'm going to do it anyway. I believe what the	03:04:22
17	email underneath the X states that I'm happy to --	03:04:25
18	A. I'm happy to report that the -- hmm.	03:04:31
19	Q. Something for department performance?	03:04:38
20	A. Yeah.	03:04:41
21	Q. Are --	03:04:42
22	A. Oh, yeah. I can give you the gist of	03:04:44
23	this.	03:04:46
24	Q. Sure, that would be really helpful.	03:04:46
25	A. So, this is -- see, you've got the From	03:04:48

Page 224

1 and To. So, it's from legal bud. I don't know if 03:04:50
 2 I -- no. It's legal budget. So, legal budget. And 03:04:53
 3 it's coming from the legal budget person to Johnny 03:04:58
 4 Law, who is senior counsel of whoever, and it's an 03:05:02
 5 operations update and attorney-client privileged. 03:05:05
 6 And it says, "I'm happy to report" -- you 03:05:10
 7 know, whatever. This is about budget and spend for 03:05:12
 8 outside counsel, and it's -- the budget for outside 03:05:15
 9 counsel has declined. 03:05:19
 10 Q. The written transcript will not reflect 03:05:21
 11 that, but there was a note of pride in your voice. 03:05:24
 12 Outside counsel found, amusing. 03:05:31
 13 A. And it's -- it's marked "privileged" and 03:05:37
 14 then I -- I'm sorry, there's no question pending. 03:05:39
 15 Why don't you ask. 03:05:42
 16 Q. I think you guessed where I was going, 03:05:43
 17 which was, this is an example of the kind of 03:05:45
 18 communication that you instructed attendees at the 03:05:48
 19 presentation would not be privileged? 03:05:50
 20 A. This gets the red X. 03:05:53
 21 Q. Indicating that it was not privileged? 03:05:57
 22 A. Correct. 03:05:59
 23 Q. And I think we covered this earlier: Does 03:06:00
 24 the red X on the prior page also indicate that this 03:06:04
 25 is a communication that you did not -- that you 03:06:07

Page 225

1 instructed the attendees at the presentation would 03:06:10
2 not be considered privileged? 03:06:12
3 A. Correct. 03:06:15
4 Q. That was a very long sentence. 03:06:18
5 The next page, the page marked 313, the 03:06:23
6 subject line of that email looks like it needs 03:06:28
7 your -- an A. Is that "advice" under there? 03:06:32
8 A. I think so. 03:06:34
9 Q. I don't want you to guess. 03:06:37
10 A. I need your -- yeah, ASAP. Maybe I need 03:06:39
11 your advice, need your advice ASAP, or something to 03:06:45
12 that effect. 03:06:49
13 Q. Is this an example of a communication that 03:06:49
14 you instructed attendees would be considered 03:06:54
15 privileged? 03:06:58
16 A. I will walk you through and give you a 03:06:59
17 little context. This one I try to get a little 03:07:01
18 tricky with them. 03:07:04
19 So, I've got it coming from the bis dev 03:07:05
20 department, once again, to Johnny Law, who I think 03:07:07
21 is only counsel this time. Poor Johnny. 03:07:09
22 It says: I need your advice. It says: 03:07:11
23 I'm concerned about a something deal. Is the 03:07:14
24 indemnity provision okay? 03:07:16
25 What does everybody think? And so some 03:07:19

Page 226

1 people who -- no matter what they say, I say: But 03:07:23
2 it's not marked. It's not marked privileged. 03:07:25
3 They go: Oh, yeah. 03:07:28
4 I said green check. It's still 03:07:31
5 privileged. The marking means nothing. The marking 03:07:32
6 is irrelevant to whether a communication qualifies 03:07:36
7 for privileged treatment. 03:07:40
8 Q. Let's turn to the next slide. 03:07:44
9 A. I love Fido over here. 03:07:49
10 Q. I'm really getting a sense of your love of 03:07:52
11 dogs in general -- 03:07:54
12 A. Agree. 03:07:55
13 Q. -- in your presentations. 03:07:57
14 Are these various quotes scattered over 03:07:59
15 the next two slides quotes that you discussed with 03:08:01
16 the attendees at the presentation? 03:08:08
17 A. Yes. So, again, there's animation here 03:08:10
18 that obviously doesn't come through on the printout, 03:08:13
19 but, so, all you have coming up first is this chain 03:08:15
20 of dogs. 03:08:19
21 So, we've got -- we've got a big old 03:08:20
22 bulldog over here who's -- and I give them a little 03:08:25
23 setup. So, there's no red Xs and there's no green 03:08:27
24 checkmarks at this point. So, they're just looking 03:08:30
25 at it and I take them through this. 03:08:33

Page 227

1 Here is our bulldog. He's an outside 03:08:35
2 vendor, and he's negotiating a contract with our bis 03:08:39
3 dev dog here. And them bis dev dog communicates 03:08:41
4 with Fido, who gives his advice and very sensitive 03:08:49
5 strategy back to bis dev dog, and then bis dev 03:08:52
6 dog -- that's got to be driving the court reporter 03:08:59
7 crazy -- and then bis dev dog sends it over as an 03:08:59
8 FYI, in case you are interested, and he sends it to 03:09:06
9 this group, the round table dogs down below. 03:09:09

10 So, I walk them through each stage and 03:09:12
11 say: Okay, what do you guys think? Is this 03:09:14
12 privileged? Is this not privileged? 03:09:17

13 So, the first one gets a red X. It's an 03:09:21
14 arm's length negotiation. An outsider. 03:09:23

15 Here, we've got bis dev dog and Fido going 03:09:26
16 back and forth. It seems like all the elements are 03:09:30
17 there. 03:09:33

18 Then I say: Look, it's unclear. I don't 03:09:33
19 know these -- who the round table dogs are. Are 03:09:35
20 they internal people? Are they external people? Do 03:09:38
21 they need to know these things? Should they have 03:09:42
22 been included in the first place? 03:09:44

23 This is where, remember, guys, law does 03:09:46
24 not equal science. Law does not equal math. There 03:09:48
25 are -- there are states, and the evidence laws in 03:09:51

	Page 228
1 states are different. Everywhere, judges may look	03:09:55
2 at the same set of facts and come to different	03:09:59
3 conclusions. So, it's tenuous, but we're going to	03:10:01
4 give it a no.	03:10:04
5 Q. Let's turn to the next slide, marked 316,	03:10:06
6 then.	03:10:11
7 A. Yes. I'm sorry. 316?	03:10:11
8 Q. Sorry. Two after the one you were just	03:10:16
9 describing.	03:10:18
10 A. Okay.	03:10:20
11 Q. What did you tell the participants when	03:10:22
12 you showed them this slide?	03:10:25
13 A. So, I was giving them a real world,	03:10:27
14 close-to-home, hard-hitting example of illustrating	03:10:29
15 the points that I've gone through on privilege; that	03:10:32
16 ultimately it's a judge that makes decisions about	03:10:35
17 whether something is privileged or not.	03:10:38
18 Q. Did you discuss the Meyer case with them	03:10:39
19 in connection with this slide or the next slide?	03:10:43
20 A. Briefly, yes.	03:10:47
21 Q. What did you tell them?	03:10:47
22 A. I told them that it was a situation where	03:10:48
23 the -- the -- there was a request to -- this is --	03:10:51
24 I'm sorry, I have to check with counsel, like how --	03:10:57
25 is that any different? You've waived on the entire	03:11:01

		Page 229
1	presso, yeah.	03:11:05
2	MS. GOODMAN: The question is: What did	03:11:07
3	you tell them about these next two slides? You	03:11:08
4	can answer that question.	03:11:10
5	THE WITNESS: Okay. So, I gave them a	03:11:11
6	brief synopsis of the -- of the facts in Meyer	03:11:13
7	and the -- and the side show that was the --	03:11:16
8	that ultimately was litigated, and I walked	03:11:24
9	them through Judge Rakoff's order, or at	03:11:27
10	least -- I didn't walk them through every page.	03:11:33
11	In fact, this -- I didn't walk them through	03:11:38
12	every page of the order. I gave them a little	03:11:39
13	bit of background on that and highlighted --	03:11:41
14	I'm sorry. Do you want me to keep going? Do	03:11:44
15	you have a question?	03:11:47
16	BY MS. TARAZI:	03:11:47
17	Q. Well, I was going to ask you a question	03:11:47
18	about the next slide, which is a slide marked 317.	03:11:49
19	It looks like you boxed out a portion of the order	03:11:51
20	in the Meyer case.	03:11:55
21	A. I did.	03:11:57
22	Q. And the portion of the order you boxed out	03:11:58
23	is -- the full, complete sentence in that box reads,	03:12:00
24	"The question here however" --	03:12:03
25	A. Do you want me to read it?	03:12:10

	Page 230
1 Q. "The questions here presented, however,	03:12:11
2 are whether such dubious practices in waiver result	03:12:14
3 in waiver of attorney-client privilege and work	03:12:17
4 product protection and whether disciplinary action	03:12:21
5 is warranted."	03:12:23
6 My version is very faint.	03:12:25
7 A. Yes, you read it correctly.	03:12:28
8 Q. What did you tell the participants about	03:12:30
9 that?	03:12:31
10 A. So -- so, I'm illustrating the prior --	03:12:32
11 now we've come full circle, and we're -- we've got a	03:12:34
12 judge that is examining privileged documents to	03:12:38
13 determine -- in camera to determine whether or not	03:12:45
14 they are, in fact, privileged.	03:12:47
15 Q. Let's turn to the next slide. It reads --	03:12:57
16 the underlying portion reads: "Uber and Ergo" --	03:13:00
17 who is Ergo?	03:13:06
18 A. Ergo was a vendor.	03:13:08
19 Q. What services did the vendor provide?	03:13:10
20 A. They provided some investigative services.	03:13:13
21 Q. To who at Uber?	03:13:16
22 A. To Uber.	03:13:19
23 Q. To anyone in particular at Uber?	03:13:19
24 A. To the -- I think the -- well, to the	03:13:21
25 security group.	03:13:24

	Page 231
1	Q. To the Threat Ops Group? 03:13:25
2	A. To Threat Ops, yes. 03:13:27
3	Q. And Threat Ops to SSG? 03:13:28
4	A. No, this may have been before SSG. 03:13:32
5	Q. To Market Analytics? 03:13:35
6	A. No. 03:13:36
7	Q. Just generally Threat Ops? 03:13:37
8	A. This is the -- this would be more -- yes, 03:13:38
9	just generally Threat Ops. This is very early in my 03:13:43
10	tenure. 03:13:48
11	Q. "Uber and Ergo claimed attorney-client 03:13:48
12	privilege and/or work product protection over 03:13:52
13	numerous documents and voice recordings, and the 03:13:52
14	Court indicated it would need to review the 03:13:54
15	materials in camera to determine whether privilege 03:13:57
16	was correctly ascertained and/or whether the crime 03:13:59
17	fraud exception to the privilege applied." 03:14:02
18	What did you tell participants about that 03:14:04
19	slide? 03:14:07
20	A. So, I just walked them through this, and, 03:14:07
21	again, I'm saying: Look, you've got a federal judge 03:14:08
22	who has issued -- this was a fairly long order, and 03:14:12
23	I think it was a 31-page-order, or something like 03:14:15
24	that -- a 31-page order. Upfront and center, on the 03:14:18
25	first page of the order, is where he's going. 03:14:22

	Page 232
1 And I'm kind of showing them: Look, now,	03:14:24
2 the judge is saying he's got all the documents in	03:14:28
3 front of him, and he's going to look at them and see	03:14:31
4 if it meets the elements of privilege, and he's	03:14:33
5 going to see if the crime fraud exception applies to	03:14:36
6 vitiate the privilege.	03:14:42
7 Q. What did you tell the participants in	03:14:46
8 connection with the next slide?	03:14:49
9 A. So these are -- I'm looking at Bates	03:14:51
10 ending in 319; is that correct?	03:14:54
11 Q. That's correct.	03:14:56
12 A. So, I'm showing, saying: These are	03:14:59
13 clippings that were taken straight from media	03:15:01
14 reports of the -- of this case.	03:15:04
15 So -- and here you have -- you can see on	03:15:07
16 the -- the screen capture that's on the reader's	03:15:10
17 left. There is a message from Salle Yoo to Joe	03:15:16
18 Sullivan that has an antitrust lawsuit, SDNY against	03:15:21
19 Travis.	03:15:27
20 It's got -- the next text is	03:15:27
21 attorney-client communication-privilege. Salle	03:15:30
22 writing to Joe: Joe, can we find out a little more	03:15:33
23 about this plaintiff?	03:15:36
24 Joe responds. Joe sends it to Mat and	03:15:37
25 says: Please do a careful check on the plaintiff,	03:15:40

Page 233

1 the one who is the driver named -- part of the case. 03:15:42
2 Q. Is that Spencer Meyer? 03:15:46
3 A. Yes, yes. 03:15:50
4 But what I'm illustrating from this is, 03:15:52
5 like, here's a communication that is marked 03:15:54
6 privileged from the general counsel to Joe Sullivan. 03:15:56
7 And it's been disclosed in the case, and it is -- 03:15:59
8 and it is in the news. 03:16:02
9 So, to the extent I hope I disabused 03:16:04
10 everybody of the notion of marking something 03:16:07
11 privileged is going to somehow magically protect 03:16:09
12 them. 03:16:13
13 Q. The topping off from Joe Sullivan to Mat 03:16:13
14 Henley reads, and it's a little hard to read on my 03:16:15
15 copy, but I think it says, "Please do a careful 03:16:15
16 check on this plaintiff, the person who is the 03:16:19
17 driver named party in the case." 03:16:21
18 Is it Uber's general practice to do a 03:16:23
19 careful check on plaintiffs in litigation against 03:16:25
20 Uber? 03:16:28
21 MS. GOODMAN: Object to form. 03:16:30
22 You can answer that question, but that is 03:16:36
23 way outside the scope of this case. 03:16:36
24 THE WITNESS: I can't comment on general 03:16:38
25 practice. It is good security practice to 03:16:40

	Page 234
1	investigate people who may be a threat to Uber, 03:16:43
2	to Uber's riders and drivers, and certainly to 03:16:45
3	executives of the company. 03:16:49
4	BY MS. TARAZI: 03:16:50
5	Q. Did Uber do a careful check of Waymo? 03:16:50
6	MS. GOODMAN: Object to form. 03:16:55
7	THE WITNESS: I am unaware of any 03:16:57
8	investigations with respect to -- I don't even 03:16:59
9	know how to answer that question. I mean, I 03:17:04
10	don't know. 03:17:08
11	MR. STUMPHAUZER: Talking about Waymo. 03:17:10
12	That's progress. 03:17:11
13	BY MS. TARAZI: 03:17:13
14	Q. Did Uber do a careful check of Google? 03:17:13
15	MS. GOODMAN: Object to form. 03:17:17
16	THE WITNESS: Not to my knowledge. 03:17:18
17	BY MS. TARAZI: 03:17:19
18	Q. If you turn over two pages, or maybe 03:17:19
19	three, to the one marked 322, it looks like a 03:17:21
20	picture of Edward Snowden. 03:17:25
21	What did you tell -- 03:17:26
22	A. Let me get there. Let me get there. 03:17:31
23	Q. -- the people that you presented this deck 03:17:31
24	to -- 03:17:34
25	A. So, I think it's -- what did I tell them 03:17:34

	Page 235
1 about? Hopefully, the image speaks for itself.	03:17:36
2 So, we're kind of -- so, underneath the	03:17:44
3 picture of Snowden is the famous picture of Hillary	03:17:47
4 Clinton on her BlackBerry with her sunglasses on,	03:17:51
5 right? So, this is before the election, and so	03:17:55
6 it's -- I mean, it was a different time.	03:17:57
7 And I say, you know: Look, emails are	03:18:01
8 everywhere. Emails are -- can be taken out of	03:18:05
9 context. There's important things in emails that	03:18:09
10 people write all the time. And guess what? Snowden	03:18:14
11 pops up. There's always somebody out there that's	03:18:18
12 going to read them.	03:18:21
13 Q. Do you know who Rick Jacobs is?	03:18:22
14 A. Yes, I do.	03:18:25
15 Q. Did you work with him?	03:18:25
16 A. He worked in Threat Ops. I was a lawyer	03:18:29
17 embedded with Threat Ops. So, yes, projects we	03:18:32
18 worked on.	03:18:34
19 Q. What kind of projects did you work on?	03:18:36
20 A. Oh, I don't -- am I -- can I talk about --	03:18:38
21 I guess you could talk about subtopics.	03:18:47
22 MS. GOODMAN: You can answer that question	03:18:49
23 as a general subject matter level that would be	03:18:50
24 on a privilege log, what kind of things did you	03:18:53
25 work with him on.	03:18:58

	Page 249
1 states: "Early in his tenure, Jacobs advocated for	03:44:24
2 a secure and encrypted centralized database to	03:44:26
3 ensure confidentiality and recordkeeping, but	03:44:29
4 provide access to intelligence for Threat Ops	03:44:32
5 personnel. He presented a draft proposal to	03:44:35
6 managers Henley and Clark."	03:44:37
7 I don't think this is what is meant here,	03:44:41
8 but you did not manage Mr. Jacobs, correct?	03:44:42
9 A. I did not manage Mr. Jacobs.	03:44:47
10 Q. Do you recall receiving a draft proposal	03:44:51
11 for a centralized database?	03:44:53
12 A. Not specifically, no.	03:44:56
13 Q. Do you remember discussing the centralized	03:44:58
14 database referenced on page 5 of the Jacobs letter?	03:45:02
15 A. I don't know what Jacobs is referencing on	03:45:07
16 page 5. And the sentence that you just read, while	03:45:08
17 I do recall a centralized -- a desire for a	03:45:11
18 centralized database that Mat Henley wanted to get	03:45:15
19 done, that I believe Jacobs was tasked to complete.	03:45:21
20 Q. Did you object to the creation of such a	03:45:30
21 database?	03:45:32
22 MS. GOODMAN: You can answer that	03:45:35
23 question.	03:45:36
24 THE WITNESS: No.	03:45:36
25	

	Page 259	
1	acquisition --	03:55:19
2	MR. STUMPHAUZER: No. This one is, did	03:55:20
3	you provide guidance.	03:55:21
4	MS. GOODMAN: Did you provide guidance.	03:55:23
5	I'm sorry, the live feed is not accurately	03:55:25
6	reflecting your question, so, could you please	03:55:27
7	repeat it?	03:55:32
8	BY MS. TARAZI:	03:55:33
9	Q. Did you provide guidance to SSG with	03:55:33
10	respect to the acquisition of non-attributable	03:55:35
11	hardware?	03:55:38
12	MS. GOODMAN: Right. And that question	03:55:39
13	calls for legal advice, and I instruct you not	03:55:40
14	to answer.	03:55:42
15	MS. TARAZI: Same instruction if I ask	03:55:45
16	about software?	03:55:47
17	MS. GOODMAN: What are you going to ask	03:55:52
18	about software?	03:55:53
19	BY MS. TARAZI:	03:55:54
20	Q. Did you provide guidance to SSG with	03:55:54
21	respect to the acquisition of non-attributable	03:55:56
22	software?	03:55:59
23	MS. GOODMAN: Same instruction.	03:55:59
24	BY MS. TARAZI:	03:56:03
25	Q. Are you aware of Uber storing data on	03:56:09

Page 260

1 non-attributable devices to avoid detection, 03:56:13
2 including in connection with legal discovery? 03:56:15
3 THE WITNESS: Counsel for Uber? 03:56:20
4 MS. GOODMAN: You may answer that 03:56:24
5 question. 03:56:25
6 THE WITNESS: No. 03:56:25
7 BY MS. TARAZI: 03:56:25
8 Q. Under heading C, the heading is 03:56:32
9 "Concealment, Cover-Up and Falsification of Records 03:56:37
10 Through the Abuse of Attorney-Client Privilege 03:56:41
11 Designations." 03:56:43
12 In the second paragraph, the second 03:56:50
13 sentence, beginning "during the presentation," it 03:56:52
14 states: "Clark verbally coached the participants on 03:56:55
15 how to use attorney-client privilege to ensure 03:56:57
16 sensitive intelligence collection activities would 03:56:59
17 not surface in litigation." 03:57:03
18 Is that correct? 03:57:05
19 THE WITNESS: Counsel for Uber? 03:57:06
20 MS. GOODMAN: You may answer that. 03:57:07
21 THE WITNESS: Sorry? 03:57:09
22 MS. GOODMAN: You may answer that. 03:57:09
23 THE WITNESS: No. 03:57:10
24 BY MS. TARAZI: 03:57:10
25 Q. The next sentence reads: "Clark also 03:57:10

	Page 290
1 redacted.	04:53:50
2 THE WITNESS: Counsel?	04:53:51
3 MS. GOODMAN: Object to form. And, again,	04:53:52
4 you're asking a question, does Mr. Clark	04:53:53
5 understand whether Uber worked unlawfully to	04:53:56
6 obtain trade secrets generally.	04:53:59
7 You cannot ask that question without	04:54:01
8 asking him to reveal his legal conclusions and	04:54:03
9 mental judgments.	04:54:05
10 Also, the question has nothing to do --	04:54:06
11 or the part of the letter from which you are	04:54:08
12 reading has nothing to do with Waymo, and the	04:54:10
13 thing is, there's a redaction about who	04:54:12
14 Mr. Jacobs is alleging in this context. That's	04:54:16
15 not relevant to this case. So, you should move	04:54:19
16 on.	04:54:21
17 BY MS. TARAZI:	04:54:24
18 Q. Are you aware of Uber ever remotely	04:54:24
19 accessing confidential corporate communications and	04:54:27
20 data from Waymo?	04:54:31
21 MS. GOODMAN: If you can answer that	04:54:33
22 question without revealing information in the	04:54:34
23 course of an attorney-client communication,	04:54:36
24 then go ahead and do so.	04:54:43
25 THE WITNESS: No.	04:54:45

	Page 301
1 probably much more than that.	05:15:07
2 Q. Did any litigation hold that you received	05:15:09
3 in connection with the Jacobs allegation instruct	05:15:11
4 you not to use Wickr to discuss the case?	05:15:14
5 A. I don't recall the specific hold. I need	05:15:16
6 to see it. But it should be in my documents.	05:15:20
7 Q. Do you recall ceasing to use Wickr to	05:15:22
8 discuss Jacobs' allegations after receiving the	05:15:26
9 litigation hold?	05:15:29
10 A. Yes. I would not discuss the substance of	05:15:30
11 a matter that was on legal hold on an ephemeral	05:15:33
12 communication tool.	05:15:40
13 Q. Did you turn over your personal cell phone	05:15:41
14 in connection with the litigation hold placed in	05:15:47
15 connection with the Jacobs matter?	05:15:51
16 MS. GOODMAN: Objection, asked and	05:15:53
17 answered.	05:15:53
18 THE WITNESS: No.	05:15:54
19 MS. TARAZI: For the record, I have	05:16:08
20 withdrawn the exhibit previously marked as	05:16:09
21 Exhibit 9712.	05:16:11
22 BY MS. TARAZI:	05:16:20
23 Q. Did you have any -- did you ever play --	05:16:20
24 strike that. I'll start again.	05:16:23
25 Did you play any role in investigating the	05:16:24

	Page 302
1 allegations in the Jacobs letter?	05:16:26
2 A. I was interviewed. My machine was imaged.	05:16:29
3 Q. Who were you interviewed by?	05:16:35
4 A. Lawyers from WilmerHale.	05:16:37
5 Q. Were you interviewed by anyone in-house at	05:16:45
6 Uber in connection with that investigation?	05:16:50
7 A. I was with Angela Padilla and a lawyer	05:16:55
8 from Littler, as well. I believe she was from	05:16:58
9 Littler.	05:17:01
10 Q. From Littler?	05:17:02
11 A. Littler Mendelson. It's a law firm.	05:17:03
12 Q. And, also, you said by WilmerHale?	05:17:06
13 A. Yes.	05:17:11
14 Q. Are you aware of who at Uber was involved	05:17:12
15 in the investigation into the Jacobs allegations?	05:17:15
16 THE WITNESS: Counsel?	05:17:19
17 MS. GOODMAN: The question is, if you	05:17:20
18 know, who at Uber was involved in the	05:17:21
19 allegations and the investigation of the Jacobs	05:17:24
20 allegations.	05:17:27
21 THE WITNESS: So, I don't know everybody	05:17:28
22 that was involved, but I can give you names of	05:17:29
23 people who I believe were involved. Is that	05:17:32
24 what you would like me to do?	05:17:35
25	

	Page 356
1 cannot do of a lawyer.	06:57:13
2 BY MS. TARAZI:	06:57:17
3 Q. Did Uber use non-attributable devices to	06:57:23
4 perform competitive intelligence on Uber -- I'm	06:57:26
5 sorry, on Waymo?	06:57:31
6 MS. GOODMAN: You can answer that question	06:57:33
7 if you can do so without revealing the contents	06:57:34
8 of an attorney-client communication.	06:57:37
9 THE WITNESS: I don't know what you mean	06:57:41
10 by "unattributable device," but not to my	06:57:42
11 knowledge.	06:57:45
12 BY MS. TARAZI:	06:57:45
13 Q. Did Uber use any devices that could not be	06:57:45
14 traced to Uber to perform competitive intelligence	06:57:48
15 on Waymo?	06:57:51
16 MS. GOODMAN: Object to the form.	06:57:54
17 Same instruction with regard to the	06:57:54
18 privilege.	06:57:56
19 THE WITNESS: Not to my knowledge.	06:57:57
20 BY MS. TARAZI:	06:57:59
21 Q. Did Uber use any devices that could not be	06:57:59
22 attributed to Uber to perform competitive	06:58:02
23 intelligence on Google?	06:58:05
24 MS. GOODMAN: Object to the form.	06:58:07
25 Same instruction regarding the privilege.	06:58:08

	Page 357	
1	THE WITNESS: Not to my knowledge.	06:58:10
2	BY MS. TARAZI:	06:58:20
3	Q. Have you ever heard the phrase,	06:58:21
4	"augmented, non-attributable Internet collection"?	06:58:22
5	MS. GOODMAN: Yes or no?	06:58:28
6	THE WITNESS: No.	06:58:31
7	BY MS. TARAZI:	06:58:31
8	Q. Has Uber ever used vendors to perform	06:58:31
9	competitive intelligence tasks using devices that	06:58:35
10	could not be attributed to Uber?	06:58:38
11	MS. GOODMAN: Same instruction with	06:58:41
12	respect to the privilege.	06:58:42
13	THE WITNESS: Not to my knowledge.	06:58:47
14	BY MS. TARAZI:	06:58:52
15	Q. Who was involved in the competitive	06:58:53
16	intelligence gathering that Uber conducted of Waymo?	06:58:57
17	When I say "Waymo" in this context, I'm referring to	06:59:05
18	Waymo and Google's self-driving car division.	06:59:08
19	THE WITNESS: Counsel for Uber?	06:59:13
20	MS. GOODMAN: Object to the form of the	06:59:16
21	question.	06:59:17
22	You may answer that to the extent you can	06:59:17
23	do so without revealing the contents of an	06:59:19
24	attorney-client communication.	06:59:22
25	THE WITNESS: Okay. Can you re-ask the	06:59:23

Page 371

1 Q. Do you have any knowledge that anyone in 07:27:23
2 the autonomous vehicle group at Uber ever 07:27:25
3 purposefully labeled a document as privileged in 07:27:28
4 order to hide it from the court overseeing this 07:27:30
5 litigation? 07:27:33

6 A. I'm sorry, can you -- can you -- can you 07:27:34
7 reword it? 07:27:36

8 Q. Do you have any knowledge that anyone in 07:27:37
9 the autonomous vehicle group at Uber ever 07:27:39
10 purposefully labeled a document as privileged in 07:27:42
11 order to hide it from the court overseeing this 07:27:44
12 litigation? 07:27:47

13 A. No. 07:27:48

14 Q. Did you ever mark a document as 07:27:51
15 "attorney-client privileged" in order to hide it 07:27:52
16 from Waymo or Google? 07:27:57

17 A. No. 07:27:58

18 Q. Would you ever do that? 07:27:58

19 A. No. 07:27:59

20 Q. Did you ever direct anyone to destroy 07:28:00
21 evidence? 07:28:03

22 A. No. 07:28:03

23 Q. I would like to show you a document that 07:28:05
24 we will mark 9715. This is a document bearing Bates 07:28:08
25 label UBER 00355965, which I understand is being 07:28:29

	Page 372
1 introduced to Waymo today in connection with a	07:28:33
2 variety of discovery requests that they have put on	07:28:37
3 us at this close of discovery.	07:28:39
4 Do you have the document in front of you?	07:28:41
5 A. I don't have it. You didn't give the	07:28:46
6 court reporter a chance to mark it.	07:28:47
7 (The referred-to document was marked by	07:28:58
8 the court reporter for Identification as	07:28:58
9 Deposition Exhibit 9715.)	07:28:58
10 BY MS. GOODMAN:	07:29:01
11 Q. I ask you to review this document.	07:29:03
12 (A discussion was held off the record,	07:29:46
13 after which the following proceedings were	07:29:46
14 held:)	07:29:46
15 BY MS. GOODMAN:	07:29:54
16 Q. Have you had a chance?	07:29:54
17 A. Almost.	07:29:55
18 Q. Okay.	07:29:56
19 A. Yes, I read the document.	07:30:27
20 Q. All right. I will direct your attention	07:30:28
21 to page 966, the bottom of the email string.	07:30:30
22 Alberto Fittarelli writes, "Craig, for	07:30:33
23 your review and legal advice. Thanks, Nicoletta.	07:30:38
24 Appreciate it."	07:30:40
25 Do you see that?	07:30:42

Page 373

1 A. I do. 07:30:42

2 Q. And you respond, "This really shows the 07:30:42

3 use of the A/C priv statement like we talked about 07:30:42

4 last week. Is thanking her really for my review and 07:30:46

5 advice? It just proves overuse." 07:30:49

6 What did you mean by that? 07:30:51

7 A. Well, I meant that this is -- I don't see 07:30:54

8 the elements of privilege in this. 07:30:57

9 I think I was -- you know, Alberto is 07:31:00

10 Italian, and I think the -- and in Europe, and so I 07:31:02

11 think -- look, the concept of privilege is hard 07:31:06

12 enough for Americans who have dealt with it, and 07:31:10

13 it's -- it's -- I think people who are not of the 07:31:14

United States have a much more difficult time. So, 07:31:17

15 I'm trying to make my point. 07:31:19

I think I was -- looking at this, I think 07:31:21

17 I was pretty frustrated with Alberto on this. It 07:31:24

18 must have been close in time to a presentation that 07:31:28

19 I gave. 07:31:29

20 So, I -- what I'm showing here is that 07:31:31

21 it's -- the label means nothing. 07:31:36

Q. And if you look at page -- the first page, 07:31:40

23 965, after you and Mr. Fittarelli have an exchange 07:31:42

24 about the use of privilege, you forward the string 07:31:50

25 to Rick@Uber.com. Is that Mr. Jacobs? 07:31:54

	Page 374
1	A. It appears to be. 07:31:58
2	Q. And you say to him, "I had a long talk 07:32:00
3	with Alberto this morning. I was disheartened by 07:32:02
4	the fact that my legal priv training did not sink 07:32:05
5	in, even though this is almost identical to an 07:32:09
6	example I had them all discuss and go through." 07:32:11
7	Why did you share with Mr. Jacobs the fact 07:32:15
8	that you were disheartened that your legal priv 07:32:20
9	training did not sink in to Mr. Fittarelli? 07:32:22
10	A. Jacobs was Mr. Fittarelli's manager. 07:32:25
11	Q. And you wanted his manager to know to get 07:32:27
12	feedback about this? 07:32:31
13	A. Yeah. It's frustrating when you spend all 07:32:32
14	of that time and fight all these dogs to put 07:32:35
15	together in a deck. 07:32:38
16	Q. You see the top email is from Rick Jacobs 07:32:41
17	to [REDACTED] ? 07:32:44
18	A. Yes. 07:32:48
19	Q. And I noticed when you were reviewing this 07:32:48
20	document, you might have chuckled to yourself. I'm 07:32:50
21	wondering if you chuckled in response to that 07:32:53
22	forward of the communication from himself to his 07:32:55
23	personal email? 07:32:57
24	A. Yes, I did find that interesting. 07:32:59
25	Q. What do you find interesting about that? 07:33:01

	Page 375	
1	A. Well, this is information -- internal	07:33:03
2	information that he has exfiltrated.	07:33:05
3	Q. And what's the date on Mr. Jacobs' forward	07:33:09
4	to himself?	07:33:12
5	A. April 13, 2017, at 5:50 p.m.	07:33:15
6	Q. Do you recall the date of Mr. Jacobs'	07:33:28
7	resignation email?	07:33:32
8	A. I don't.	07:33:34
9	Q. Do you have Exhibit 9711 in front of you?	07:33:35
10	A. Let me take a look. Ninety-seven what?	07:33:40
11	Q. Eleven.	07:33:44
12	A. Yes.	07:34:01
13	Q. And if you flip to the last -- the page	07:34:02
14	ending 655 --	07:34:05
15	A. Yes.	07:34:10
16	Q. -- the email from Rick Jacobs that begins	07:34:11
17	sort of a third down the page?	07:34:15
18	A. Yes.	07:34:17
19	Q. Is that his resignation email?	07:34:17
20	A. It appears to be.	07:34:19
21	Q. And what is the date on that?	07:34:21
22	A. April 14, 2017, 10:38 a.m.	07:34:22
23	MS. GOODMAN: No further questions. I	07:34:27
24	pass the question to your counsel.	07:34:29
25	MR. STUMPHAUZER: Actually, I think the	07:34:31

1 C E R T I F I C A T E

2 STATE OF FLORIDA)

3 : ss

4 COUNTY OF MIAMI-DADE)

5
6 I, KELLI ANN WILLIS, a Registered
7 Professional, Certified Realtime Reporter and
8 Notary Public within and for The State of
9 Florida, do hereby certify:

10 That CRAIG CLARK, the witness whose
11 deposition is hereinbefore set forth was duly
12 sworn by me and that such Deposition is a true
13 record of the testimony given by the witness.

14 I further certify that I am not related
15 to any of the parties to this action by blood
16 or marriage, and that I am in no way interested
17 in the outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto set
19 my hand this 26th day of December, 2017.

20
21 
22

23 KELLI ANN WILLIS, RPR, CRR
24
25